

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

Odin Telephone Exchange, Inc.)	
)	
Petition for Suspension or Modification of)	Docket No. 04-0239
Section 251(b)(2) requirements of the Federal)	
Telecommunications Act pursuant to Section)	
251(f)(2) of said Act; for entry of Interim Order;)	
and for other necessary relief.)	

RESPONSE IN OPPOSITION TO MOTION TO STRIKE
ALL OR PART OF VERIZON WIRELESS' BRIEF

NOW COMES Verizon Wireless, by and through its attorneys, and respectfully submits its response to the Illinois Commerce Commission (“ICC” or “Commission”) in opposition to Odin Telephone Exchange’s (“Odin”) Motion to Strike All or Part of Verizon Wireless’ Brief in the above-captioned proceeding and states as follows:

I. INTRODUCTION

The schedule established by the Administrative Law Judge (“ALJ”) in this proceeding provided for a single round of simultaneous briefs in this matter.¹ When intervening in this proceeding, Verizon Wireless accepted the established schedule. Now, after simultaneous briefs have been filed, Odin improperly attempts to file a reply brief in the guise of a Motion to Strike Verizon Wireless’ Brief. Not only is Odin’s Motion to Strike inappropriate argument, the points made therein have no basis in law. If the requested relief were granted, not only would Verizon Wireless’ due process rights be violated, but, this Commission would be denying Illinois

¹ TR 124; TR 136.

consumers a right granted to them by Congress and the Federal Communications Commission — a right to intermodal local number portability.

It is Odin, not Verizon Wireless, that has the statutory burden of proof in this proceeding.

The FCC has ruled:

A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.²

Despite this burden, Odin now moves to strike portions of Verizon Wireless' brief where Verizon Wireless makes policy arguments and draws legal conclusions. Odin failed to meet its burden to demonstrate that it meets the statutory and regulatory standards for a suspension of its LNP obligations under Section 251(f)(2). Odin failed to introduce into evidence any facts related to such issues as:

- The impact an additional waiver would have on number pooling and NXX exhaustion;
- Comparisons between Odin and any other rural incumbent local exchange carrier currently offering LNP;
- Comparisons between the amount Odin alleges as its LNP costs and the costs of any similarly situated carrier; or,
- Attempts Odin has taken to minimize the costs of implementing LNP.

As noted in Verizon Wireless' brief,³ this Commission **must** consider these issues in order to make an informed decision regarding whether or not an additional suspension of Odin's

² 47 C.F.R. § 51.405(b); *see also Local Competition First Report and Order*, ¶1262.

³ Verizon Wireless Brief, pp. 7-22.

obligation to provide LNP “is necessary to avoid significant adverse impact on users of telecommunications services generally.”⁴

Odin attempts to strike those portions of Verizon Wireless’ brief where Verizon Wireless points out these and other shortfalls. Verizon Wireless does not have the burden to provide this Commission with evidence that would cure these shortfalls.

Odin claims that Verizon Wireless, in its brief, is attempting “to make assertions of purported fact that are [allegedly] unsupported by the record evidence.”⁵ With limited exceptions, those portions of Verizon Wireless’ brief, which Odin seeks to strike do not argue issues of fact, but rather argue policy and legal issues. Odin’s Motion to Strike is inappropriate and should be denied in its entirety.

Odin argues that its Petition should be considered in a vacuum, without any consideration of the other 32 Petitions for waiver from LNP requirements that were filed within days of Odin’s, heard the same week as Odin’s, and are on the same schedule for briefing, expected

⁴ 47 U.S.C. § 251(f)(2)(i).

⁵ Odin Motion to Strike, ¶ 1.

order, and Commission consideration.⁶ The Petitioners (24 of which were represented by the same counsel as Odin and 9 of which were represented by a single, but different counsel) filed all 33 petitions within days of each other, knowing that this Commission was under a statutory obligation to complete all 33 proceedings in only 180 days.⁷

In light of the scheduling difficulties that 33 simultaneous Petitions posed to the Commission, at the first status hearing the Parties discussed whether or not it would be better to withdraw some of the petitions and re-file them in a more orderly manner. Odin's counsel indicated he would consider such a proposal.⁸ However, Odin, and the 32 other Petitioners, subsequently declined to re-file some of the cases to lighten the load,⁹ creating massive burdens on the Commission and other parties.

⁶ Odin Motion to Strike, ¶ 19. The other 32 Petitions are: Gridley Telephone Company (Docket No. 04-0180), Flat Rock Telephone Co-Op, Inc. (Docket No. 04-0181), Cambridge Telephone Company (Docket No. 04-0182), Henry County Telephone Company (Docket No. 04-0183), LaHarpe Telephone Company (Docket No. 04-0184), Hamilton County Telephone Co-Op (Docket No. 04-0185), McDonough Telephone Company (Docket No. 04-0186), Moultrie Independent Telephone Company (Docket No. 04-0189), Diverse Communications (Docket No. 04-0192), Glasford Telephone Company (Docket No. 04-0193), Viola Home Telephone Company (Docket No. 04-0194), New Windsor Telephone Company (Docket No. 04-0195), Montrose Mutual Telephone Company (Docket No. 04-0196), Woodhull Community Telephone Company (Docket No. 04-0197), Leaf River Telephone Company (Docket No. 04-0198), Oneida Network Services, Inc. (Docket No. 04-0199), Oneida Telephone Exchange (Docket No. 04-0200), McNabb Telephone Company (Docket No. 04-0205), Adams Telephone Co-Op (Docket No. 04-0228), Cass Telephone Co (Docket No. 04-0232), Shawnee Telephone Company (Docket No. 04-0236), C-R Telephone Company (Docket No. 04-0237), The El Paso Telephone Company (Docket No. 04-0238), Odin Telephone Exchange, Inc. (Docket No. 04-0239), Yates City Telephone Company (Docket No. 04-0240), Kinsman Telephone Company (Docket No. 04-0243), Stelle Telephone Company (Docket No. 04-0248), Mid Century Telephone Co-Op (Docket No. 04-0249), Wabash Telephone Co-Op (Docket No. 04-0253), Leonore Mutual Tel Company (Docket No. 04-0259), Grandview Mutual Telephone Company (Docket No. 04-0282), and Crossville Telephone Company (Docket No. 04-0283).

⁷ 47 U.S.C. § 251(f)(2).

⁸ TR 114.

⁹ TR 131.

These cases, including Odin, have been fraught with expedited deadlines (far shorter than allowed under the Commission's rules) and when taken as a whole, management of the deadlines in the 33 cases, and in the 22 in which Verizon Wireless has intervened,¹⁰ has been nearly impossible.

In considering Odin's Petition, this Commission is statutorily obligated to consider "the public interest, convenience, and necessity" in determining whether or not an additional suspension of Odin's LNP obligation would "avoid a significant adverse economic impact on users of telecommunications services generally."¹¹ Thus, the Commission is obligated to examine "the public interest, convenience, and necessity" throughout the state of Illinois and the "impact on users of telecommunications services generally" which means that all like Petitions for suspension of LNP obligations must have some bearing on this Commission's determination in this docket, as recommended by Verizon Wireless in its Brief.¹²

¹⁰ Gridley Telephone Company (Docket No. 04-0180), Flat Rock Telephone Co-Op, Inc. (Docket No. 04-0181), Cambridge Telephone Company (Docket No. 04-0182), Henry County Telephone Company (Docket No. 04-0183), LaHarpe Telephone Company (Docket No. 04-0184), Hamilton County Telephone Co-Op (Docket No. 04-0185), Moultrie Independent Telephone Company (Docket No. 04-0189), Glasford Telephone Company (Docket No. 04-0193), Viola Home Telephone Company (Docket No. 04-0194), New Windsor Telephone Company (Docket No. 04-0195), Montrose Mutual Telephone Company (Docket No. 04-0196), Woodhull Community Telephone Company (Docket No. 04-0197), Leaf River Telephone Company (Docket No. 04-0198), Oneida Network Services, Inc. (Docket No. 04-0199), Oneida Telephone Exchange (Docket No. 04-0200), Reynolds Telephone Company (Docket No. 04-0206), Adams Telephone Co-Op (Docket No. 04-0228), Shawnee Telephone Company (Docket No. 04-0236), The El Paso Telephone Company (Docket No. 04-0238), Odin Telephone Exchange, Inc. (Docket No. 04-0239), Yates City Telephone Company (Docket No. 04-0240), and Grandview Mutual Telephone Company (Docket No. 04-0282).

¹¹ 47 U.S.C. § 251(f).

¹² See *generally*, Verizon Wireless Brief.

II. VERIZON WIRELESS UTILIZED APPROPRIATE INFORMATION IN ITS BRIEF

In paragraph 2 of its Motion, Odin argues that Verizon Wireless' Brief should be stricken in its entirety or, alternatively, that portions of Verizon Wireless' Brief should be stricken as "outside of the scope of the record." In support of this assertion, Odin cites only to 220 ILCS 5/10-103 (Section 10-103 of the Public Utilities Act) and claims that "[f]indings, decision [sic] and orders made by the Commission must be based *exclusively on the record* in a given proceeding and the documents described in Section 10-35 of the Illinois Administrative Procedure Act, 5 ILCS 100/10-35." While Odin is correct that, generally speaking, findings, decisions, and orders made by the Commission are to be based exclusively on "the record," Odin fails to recognize the breadth of "the record" under the applicable rules, regulations, and policies.

The pertinent portion of Section 10-103 of the Public Utilities Act states as follows:

In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits **together with all papers and requests filed in the proceeding, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.**¹³

Section 10-35(a) of the Illinois Administrative Procedure Act provides that "the record" in a contested case includes all of the following:

- (1) All pleadings (including all notices and responses thereto), motions, and rulings.
- (2) All evidence received.
- (3) A statement of matters officially noticed.

¹³ 220 ILCS 5/10-103 (*emphasis added*).

- (4) Any offers of proof, objections, and rulings thereon.
- (5) Any proposed findings and exceptions.
- (6) Any decision, opinion, or report by the administrative law judge.
- (7) All staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case that are consistent with Section 10-60 [5 ILCS 100/10-60].
- (8) Any communication prohibited by Section 10-60 [5 ILCS 100/10-60]. No such communication shall form the basis for any finding of fact.¹⁴

Notably, the Commission's own rules call for an even broader and more inclusive record.

Specifically, Section 200.700(a) of the Commission's Rules of Practice states as follows:

- a) The record in any proceeding before the Commission shall include:
 - 1) **All pleadings**, (including all notices and responses thereto), motions, and rulings;
 - 2) Evidence received;
 - 3) A statement of matters officially noticed;
 - 4) Offers of proof, objections, and rulings thereon;
 - 5) Proposed findings and exceptions;
 - 6) Any decision, opinion or report by the Hearing Examiner ...;
 - 7) All staff memoranda or data submitted to the Hearing Examiner or Commissioners in connection with their consideration of the case ...;
 - 8) **Any briefs**, proposed orders and exceptions thereto which have been filed by the parties;
 - 9) Orders and opinions of the Commission; and

¹⁴ 5 ILCS 100/10-35(a).

10) Any communications prohibited by Section 200.710, but such communications shall not form the basis for any finding of fact. ...¹⁵

Therefore, pursuant to the applicable rules, regulations, and procedures, the brief that Odin seeks to have stricken is a part of the record upon which any findings, decisions, or orders made by the Commission must be based. As such, Odin's primary argument is unfounded and does not provide a legitimate basis for striking the brief of Verizon Wireless. Moreover, Odin's argument fails to acknowledge and recognize the broad discretion possessed by the Commission in shaping and conducting proceedings before it.¹⁶ In this case, public policy is best served and the policies and goals of the Commission are furthered by the use of this discretion to consider of all materials submitted to the Commission in this matter.¹⁷ After a review of the entire record, including Verizon Wireless' Brief, the Commission can and should then base its decision on what it finds to be the most credible, convincing, and pertinent portions of the record as a whole.

III. ODIN IGNORED THE PUBLIC INTEREST STANDARD AND NOW ASKS TO HAVE VERIZON WIRELESS' ARGUMENT THAT IT WAS IGNORED STRICKEN.

At Paragraph 3 of its Motion to Strike, Odin asks the Commission to strike Verizon Wireless' assertion that the "Petitioner and Staff ignore the Public Interest test in making their

¹⁵ 83 Ill. Admin. Code 200.700 (*emphasis added*).

¹⁶ See *Antioch Milling Co. v. Public Service Co. of Northern Ill.*, 4 Ill.2d 200, 210; 123 N.E.2d 302 (1954); *People of Cook County v. Ill. Commerce Commission*, 237 Ill.App.3d 1022, 1030; 606 N.E.2d 79 (1992). Additionally, the Commission has unfettered discretion to consider late-filed exhibits for admission into evidence at any time prior to issuance of a final order. See, e.g., 83 Ill. Admin. Code 200.875(c).

¹⁷ See *Petition of Commonwealth Edison Co.*, ICC Docket No. 01-0423, Opinion and Order, March 28, 2003 (noting that policy issues concerning goals and objectives can be and are considered by the Commission in reaching its decisions).

recommendations to the Commission. . . .”¹⁸ Verizon Wireless’s Brief includes eight pages of analysis of Public Interest issues that have been completely ignored or glossed over by both Odin and the Staff.¹⁹

Odin brought this Petition before this Commission pursuant to Section 251(f)(2) of the Federal Communications Act. If this Commission is to grant the requested relief, this Commission is statutorily obligated to find that such additional suspension would be “consistent with the public interest, convenience, and necessity.”²⁰

Odin cites various portions of its testimony for its invalid argument that it did consider the public interest in its testimony. An examination of each of these sections of Odin’s testimony demonstrates that they merely reiterate a statement that the granting of the requested additional suspension of Odin’s LNP obligation would be in the public interest.²¹ Odin’s witness provides absolutely no analysis or rationale why his testimony, which goes to the Company’s interest also applies to the general public interest. Staff’s testimony contains the same flaw. Under the guise of “public interest,” Staff’s witness, Jeffrey H. Hoag, discusses the impact a suspension would have and the benefit of a suspension on the company’s interest and the interests of the company’s customers.²² Odin would have this Commission believe that because it merely mentioned the public interest, it did not ignore substantive public interest concerns that this Commission must examine.

¹⁸ Verizon Wireless Brief, p. 15.

¹⁹ Verizon Wireless Brief, pp. 15-23.

²⁰ 47 U.S.C. § 251(f)(2).

²¹ Odin Exhibit 1, pp 13, 23; Odin Exhibit 2, p 3, 15-16.

²² Staff Exhibit 1.0, pp 13-18.

There is no definition of “public interest” in the Federal Communications Act,²³ the Illinois Public Utility Act,²⁴ any Commission order, or the FCC’s rules. BLACK’S LAW DICTIONARY defines public interest as:

public interest. **1.** The general welfare of the public that warrants recognition and protection. **2.** Something in which the public as a whole has a stake; esp. an interest that justifies governmental regulation.²⁵

Since the Public Utility Act notes that “protection of the public interest requires changes in the regulation of telecommunications carriers and services to ensure, to the maximum feasible extent, the reasonable and timely development of effective competition in all telecommunications service markets,”²⁶ Verizon Wireless’ statement that the “Petitioner and Staff ignore the Public Interest test in making their recommendations to the Commission. . . .”²⁷ is correct, and proper, legal argument. It cannot be rebutted that the Petitioner, rather than meet its burden under Section 251(f)(2), ignored key public interest issues that would be adversely affected by the grant of a suspension. Among these are:

- this Commission’s previous policy statements and orders relating to competition, LNP, and number conservation;
- number pooling and the impact on NPA NXX exhaustion;
- importance of fostering competition;
- customer confusion; and,

²³ 47 U.S.C. § 151 *et seq.*

²⁴ 220 ILCS 5/1-101 *et seq.*

²⁵ BLACK’S LAW DICTIONARY 1244 (7th ed. 1999).

²⁶ 220 ILCS 5/13-102(g) (2004).

²⁷ Verizon Wireless Brief, p. 15.

- the patchwork created by allowing small carriers to have suspensions, while neighboring carriers are offering wireline-to-wireless LNP.

Verizon Wireless' position should not be stricken, and it was inappropriate argument for Odin to move to strike such a legal position from Verizon Wireless' Brief.

IV. ODIN'S REQUEST TO STRIKE ARGUMENTS AND REASONED CONCLUSIONS IN VERIZON WIRELESS'S BRIEF SHOULD BE DENIED.

In various paragraphs of its Motion to Strike, Odin seeks to strike argument and reasoned conclusions from Verizon Wireless' Brief. As noted above, Odin's Motion to Strike is an improper attempt to file a reply brief in the guise of a Motion to Strike. Odin admits as much in its Motion to Strike, stating, "Odin's choice not to move to strike any particular assertion or not to argue against the merits of Verizon Wireless' claims is not a concession of the validity of or the merits of Verizon Wireless' Brief."²⁸ Because there was only a single round of simultaneous briefs in this matter,²⁹ Odin chose to move to strike advocacy statements and conclusions made by Verizon Wireless because there would have otherwise been no opportunity for Odin to respond to these statements. Verizon Wireless stands by the following advocacy statements in its brief, which are arguments and conclusions that build upon facts in the record, rather than mere statements of fact. The ALJ is free to determine the appropriate weight to give each of these conclusions:

- "Mr. Hoagg did not even know in which NPA many of Petitioners who have pending waiver petitions operate."³⁰

²⁸ Odin Motion to Strike, pp. 1-2, n. 1.

²⁹ TR 124; TR 136.

³⁰ Verizon Wireless Brief, p. 19; *See*, Odin Motion to Strike, ¶ 4. As Odin admits in its Motion to Strike, Mr. Hoagg did not know that Odin had an exchange operating in the 217 area code. Odin Motion to Strike, ¶ 4; *See also*, TR 306.

- “Wireless educational and marketing efforts are not and cannot be limited by exchange service area, but are by media markets that almost always overlap telecommunication service areas.”³¹
- “Moreover demand will follow the wide availability of the service and carriers attempts to woo customers and compete in the marketplace with advertisements and targeted mailings.”³²
- “As customers learn about the opportunities to port their landline numbers demand for LNP will grow even more, spurring additional competition and the related public interest benefits.”³³
- “As admitted by Petitioner’s witness, the cost estimate that Petitioner relies on consists of a ‘worst case scenario’ based on estimates from other companies.”³⁴

³¹ Verizon Wireless Brief, p. 22; *See*, Odin Motion to Strike, ¶6.

³² Verizon Wireless Brief, p. 26; *See*, Odin Motion to Strike, ¶ 8.

³³ Verizon Wireless Brief, p. 27; *See*, Odin Motion to Strike, ¶ 10.

³⁴ Verizon Wireless Brief, p. 30; *See*, Odin Motion to Strike, ¶11. Odin’s Motion to Strike is nothing more than a belated attempt to explain away its witness’ assertion that Odin based its cost estimates on other carriers’ estimates. Odin Exhibit 1, p. 11. Further, Odin’s witness admits that “at this point in time and for the purpose of projecting the estimated costs involved in the provision of wireline-to-wireless local number portability, we have no choice but to assume the worst case scenario” Odin Exhibit 1, p. 19.

- “Not only are each of these line items, not “carrier-specific costs *directly related* to providing LNP, as required by the FCC, but they are not specific to Petitioners and are significantly overstated.”³⁵ In addition, Staff found several of Odin’s cost estimates to be overstated, directly contradicting Odin’s assertion that “[t]he only testimony with any bearing on this issue in Odin’s docket is the un rebutted testimony of Odin’s witness.”³⁶
- “Many of these costs are not *directly related to providing LNP*, and the FCC would likely reject the inclusion of such in an LNP surcharge.”³⁷
- “Petitioners could not identify exactly what would be included in these mailings and called such identification premature.”³⁸

V. NUMBER POOLING AND NXX EXHAUSTION ARE IMPORTANT TO THIS COMMISSION’S DETERMINATION.

In Paragraph 5 of its Motion to Strike, Odin seeks to strike Verizon Wireless’ discussion of the impact of a grant of a subsequent LNP waiver to Odin on number pooling and area code

³⁵ Verizon Wireless Brief, p. 33; *See*, Odin Motion to Strike, ¶ 14. Verizon Wireless included a footnote with this conclusion relying on 47 C.F.R. § 52.33 (emphasis added) and *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, FCC 02-116, 17 FCC Rcd 2578; 2002, Feb 16, 2002, ¶41. Additional FCC orders that support this assertion are, *Citizens Telecommunications Companies; Petition for Waiver of Section 52.33(a)(1)(iv) of the Commission’s Rules to Reduce Recovery Period of Local Number Portability Surcharge*, Order, 19 FCC Rcd 8128 (April 30, 2004); *Telephone Number Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, 19 FCC Rcd 6800 (April 8, 2004); *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (January 23, 2002); *Long-Term Number Portability Tariff Filings; U S WEST Communications, Inc.*, CC Docket No. 99-35; Transmittal Nos 965, 975, 1002, Memorandum Opinion and Order, 14 FCC Rcd 11983 (July 9, 1999); *Long-Term Number Portability Tariff Filings; Ameritech Operating Companies, et al.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11883 (July 1, 1999); *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116; RM 8535, Memorandum Opinion and Order, 13 FCC Rcd 24495 (December 14, 1998); *Telephone Number Portability*, CC Docket No. 95-116; RM 8535, Third Report and Order, 13 FCC Rcd 11701 (May 5, 1998).

³⁶ Odin’s Motion to Strike, ¶ 14. *See also*, Staff Exhibit, 3, p. 10.

³⁷ Verizon Wireless Brief, p 33; *See*, Odin Motion to Strike, ¶ 14. *See supra* n. 35 for support for this assertion.

³⁸ Verizon Wireless Brief, p. 34; *See*, Odin Motion to Strike, ¶ 15. *See also*, Odin Exhibit 1, pp. 30.

(“NXX”) exhaustion. This Commission has been on the forefront of number pooling for many years. Staff’s witness, Mr. Hoagg, specifically recognized the importance of wireline-to-wireless LNP on continued number pooling efforts in his direct testimony:

- Q. As a general matter, is deployment of number portability capabilities by Illinois local exchange carriers desirable?
- A. Yes. Congress required all telecommunications carriers to provide number portability pursuant to rules promulgated by the FCC. The FCC has promulgated a number of such rules. It has stated, on at least one occasion, that the failure of telecommunications carriers to provide number portability “hampers the development of local competition.” **The FCC has emphasized that carriers offering number portability also participate in number pooling to optimize numbering resources, which benefits consumers by staving off the creation of new area codes.**³⁹

Unfortunately, Mr. Hoagg made no other mention of number pooling in his testimony and did not reflect this public benefit in his analysis or conclusions regarding the length of the requested suspension. However, Mr. Hoagg acknowledges that the Commission has available to it the status of various number plan areas.⁴⁰ Odin makes no reference to nor acknowledges the importance of this issue in its direct or rebuttal testimony.⁴¹

Verizon Wireless provided important factual information relevant to Mr. Hoagg’s assertion that the impact of LNP on pooling be carefully considered. The information provided is in the public record⁴² and, as Mr. Hoagg admits, is likely currently in the Commission’s own

³⁹ Staff Exhibit 1.0, p. 5 (emphasis added).

⁴⁰ Tr 306-307.

⁴¹ Odin Exhibits 1 and 2.

⁴² See, NeuStar, Inc. North American Numbering Plan Administration, *NPA Relief Activity Status Report*, (updated as of June 1, 2004) <<http://www.nanpa.com/reports/report.pdf>>. Verizon Wireless Brief pp. 19-20.

records and files.⁴³ The availability of this information was raised on cross and duly noted to all parties.⁴⁴ Due to the importance of this information in enabling the Administrative Law Judge and the Commission to make a fair and reasoned decision that is consistent with the public interest, if deemed necessary by the Administrative Law Judge or the Commission, Verizon Wireless hereby requests that the record be re-opened and that Administrative Notice be taken of the information provided by Verizon Wireless, which Odin seeks to strike. Administrative Notice is appropriate under Section 200.640 of the Commission's Rules, as a compilation of various reports provided to this Commission on a regular basis and as "generally recognized [] technical facts within the specialized knowledge of the Commission."⁴⁵ Section 200.640(C) of the Commission's rules provide that:

Parties and Staff shall be notified either before or during the hearing or otherwise of the materials noticed and shall be provided a reasonable opportunity to contest the material so noticed.⁴⁶

The fact that Mr. Hoagg was asked if the Commission has this information available⁴⁷ and the citation to it in Verizon Wireless' Brief provides sufficient notice to all parties of such

⁴³ Tr 306-307.

⁴⁴ *Id.*

⁴⁵ See e.g., *NeuStar, Inc. in its role as North American Numbering Plan Administrator Petition for Approval of Numbering Plan Area Relief Planning for the 815 Area Code*, ICC Docket No. 00-0475, Order, Feb. 4, 2004; *Investigation into the Requirement for a Single Overlay for the 312 and 773 NPAs*, ICC Docket No. 02-0093; Opinion, Feb. 4, 2004; *Petition to Implement Telephone Number Conservation and Number Pooling in the 309 and 217 Area Codes*, ICC Docket No. 00-0681, Opinion, Mar. 5, 2002; *NANPA, on behalf of the Illinois Telecommunications Industry, Petition for Approval of Numbering Plan Area Relief Planning for 618 Area Code*, ICC Docket No. 00-0677, Interim Order, Oct 2, 2001; *Petition for approval of NPA Relief Plans for the 312, 630, 708, and 773 NPAs*, ICC Docket No. 98-0847, Order, Aug. 21, 2001.

⁴⁶ 83 Ill. Admin. Code, Section 200.640(c).

⁴⁷ TR 306-307.

materials. As evidenced by the instant Motion to Strike, Odin has had an opportunity to contest such materials. Because of the importance and relevance of number pooling and NXX exhaustion to Odin' requested additional delay in the implementation of LNP, such materials should be allowed to remain in the record and considered by this Commission.

VI. STAFF'S ASSERTION REGARDING TAKE-RATES HAS NO FACTUAL SUPPORT.

Odin moves, at Paragraph 9 of its Motion, to strike Verizon Wireless's assertion that "Staff alleged, without any factual evidentiary support, that SBC and Verizon had relatively low initial take rates between November 24, 2003 and January 2004."⁴⁸ Staff's assertion that SBC and Verizon had relatively low initial take rates is based solely on Mr. Hoagg's "discussions with [unnamed] representatives from SBC and Verizon."⁴⁹ Mr. Hoagg's take rates were based on hearsay, not on factual evidence and therefore, Verizon Wireless' assertion that the take rates Staff alleged were "without any factual evidentiary support" should remain in Verizon Wireless' brief and should not be stricken.

VII. THIS COMMISSION MUST COMPARE ODIN TO OTHER CARRIERS OFFERING LNP.

As noted above, to make an informed decision regarding whether or not an additional suspension of Odin's obligation to provide LNP "is necessary to avoid significant adverse impact on users of telecommunications services generally,"⁵⁰ Odin had a burden to demonstrate to this Commission that any impact on customers "generally" would be "significantly adverse." This Commission cannot make such a determination without examining the actual impact of LNP on

⁴⁸ Verizon Wireless Brief, p. 26. *See*, Staff Exhibit 1, p 12; TR 314.

⁴⁹ Staff Exhibit 1, p 11

⁵⁰ 47 U.S.C. § 251(f)(2)(i).

other carriers' customers. Though Odin had the burden to provide such information to the Commission, and despite the fact that Staff chose only to compare Odin to a single, disparate, large carrier, it was Verizon Wireless who examined countless public FCC Access Tariffs to identify the Illinois companies that have tariffed LNP surcharges. This information should be vital to this Commission's determination, yet at Paragraph 12 of its Motion to Strike, Odin attempts to strike this information.

Due to the importance of this information in enabling the Administrative Law Judge and the Commission to make a fair and reasoned decision that is consistent with the public interest, if deemed necessary by the Administrative Law Judge or the Commission, Verizon Wireless hereby requests that the record be re-opened and that Administrative Notice be taken of the information provided by Verizon Wireless, which Odin seeks to strike. Administrative Notice is appropriate under Section 200.640(a)(3) of the Commission's Rules, as "[a]nnual reports, tariffs, classifications and schedules regularly established by or filed with the Commission as required or authorized by law or by an order or rule of the Commission."⁵¹ Section 200.640(c) of the Commission's rules provide that:

Parties and Staff shall be notified either before or during the hearing **or otherwise** of the materials noticed and shall be provided a reasonable opportunity to contest the material so noticed.⁵²

⁵¹ 83 Ill. Admin. Code, Section 200.640(a)(3); *See e.g.*, Staff Exhibit 1.0, p 8; *In the Matter of Citizens Telecommunications Companies*, FCC DA 04-1252, 19 FCC Rcd 8128, Apr 30, 2004; Geneseo Telephone Company filed the 3rd Revision to Page 39 of its FCC Tariff 1 on June 16, 2004 implementing this rate. (FCC Transmittal 8). On June 17, 2004, Geneseo sought leave to withdraw Transmittal No. 8, "in order to spend more time evaluating the service wit the FCC before refilling it in the tariff." *Geneseo FCC Tariff No 1, Application No. 2*, June 17, 2004.

⁵² 83 Ill. Admin. Code, Section 200.640(c) (emphasis added).

Verizon Wireless' Brief provides sufficient notice to all parties of such materials. As evidenced by the instant Motion to Strike, Odin has had an opportunity to contest such materials. It has chosen not to do so. Because of the importance and relevance of a comparison of LNP costs to customers on whether or not Odin's requested additional delay in the implementation of LNP will have an adverse impact on "users of telecommunications services generally," such materials should be allowed to remain in the record and considered by this Commission.

VIII. VERIZON WIRELESS' DISCUSSION OF ODIN'S ALLEGED LNP COSTS IS APPROPRIATE

Despite the fact that Odin's entire case revolves around its alleged LNP costs, Odin attempts to strike Verizon Wireless discussion of the cost study Odin itself placed in evidence, because it claims that it is "not before this Commission."⁵³ As Odin's witness testified:

As shown at the bottom right-hand corner of that page of the Attachment, Odin would have to recover \$1.31 per month from each access line either by means of a surcharge or a rate increase to recover the costs as described. It is Odin's position that the Commission should find that a further suspension or modification of any obligation Odin's may have to provide wireline-to-wireless local number portability is necessary to avoid a significant adverse economic impact on Odin's customers or to avoid imposing a requirement that is unduly economically burdensome on Odin and that the granting of such further suspension is consistent with the public interest, convenience and necessity.⁵⁴

In addition, Odin's entire Attachment 1 to its Exhibit 1 consists of a model for its alleged LNP costs, which Odin's witness admits

is based on cost support filed and approved by the National Exchange Carriers Association (NECA) in a local number portability filing, which they made with the FCC in NECA's

⁵³ Odin's Motion to Strike, ¶ 13; Odin's Cost Study is included with its Testimony as Exhibit 1, Attachment 1.

⁵⁴ Odin Exhibit 1, pp. 23.

Transmittal #956. The NECA model has been used by individual companies to file their federal surcharges, and as a result, we felt it was appropriate for use.⁵⁵

Further, Staff's Cost Witness, Mr. Hanson's, testimony,⁵⁶ almost entirely consists of an analysis of these costs and whether or not they are appropriate or inflated. Odin did not move to strike Mr. Hanson's testimony, but now moves to strike Verizon Wireless' analysis which is based on Mr. Hanson's testimony. It is disingenuous for Odin to now state "whether a cost would be includable or excludable from the FCC surcharge is irrelevant to this docket."⁵⁷ If Odin's costs of implementing LNP, and the impact those costs will have on Odin's customers, are irrelevant, then that alone is reason for the Commission to dismiss Odin's Petition, as there is obviously no "significant adverse impact on users of telecommunications services generally."⁵⁸

Odin asks to strike Verizon Wireless' reference to, and quotes from, the ex-parte communication between Staff and the FCC's Senior Economist for the Pricing Policy Division, Christopher Barnekov.⁵⁹ This reference should not be stricken as this information, from Verizon Wireless Cross Exhibit 2, was admitted into the record without objection.⁶⁰ Odin waived its opportunity to object to this information at the evidentiary hearing. In addition, the points made by Mr. Barnekov are fully outlined in various FCC Orders on LNP Cost Recovery.⁶¹

⁵⁵ *Id.* at 21.

⁵⁶ Staff Exhibit 3.0.

⁵⁷ Odin Motion to Strike, ¶ 13.

⁵⁸ 47 U.S.C. § 251(f)(2)(i).

⁵⁹ Verizon Wireless Brief, p. 32.

⁶⁰ TR 246-247.

⁶¹ *See, Citizens Telecommunications Companies; Petition for Waiver of Section 52.33(a)(1)(iv) of the Commission's Rules to Reduce Recovery Period of Local Number Portability Surcharge*, Order, 19 FCC Rcd 8128 (Apr. 30, 2004); *Telephone Number Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, 19

Further, after criticizing Verizon Wireless for relying on argument and reasoned conclusions throughout its brief, Odin now claims, for the first time in this proceeding that Odin is a “rate-of-return company.”⁶² If this was of importance to how Odin recovers its costs, it should have been raised by Odin’s witness, not for the first time in a Motion to Strike Verizon Wireless’ Brief. Moreover, there is no basis for the Commission to find that the costs alleged by Odin are reasonable or appropriate to be passed on to customers through a rate increase.

IX. SBC’S TARIFF DIRECTLY IMPUGNS SOME OF ODIN’S COST FIGURES.

At Paragraph 16 of it’s Motion to Strike, Odin argues that Verizon Wireless has attempted to improperly introduce tariff rates of SBC in support of an argument regarding the costs of transit and transport. In its Brief, Verizon Wireless challenges the tandem transiting rates provided by Odin’s witness in this proceeding, through the use of SBC’s Tariffed Rates. Odin’s witness lists rates for transiting, without any basis for support, on page 2 of his Attachment 1.⁶³ Because Odin’s witness testified that he has used “the rates and rate elements that the small companies understand SBC [] would charge . . . and based upon Odin’s access rates for transport for the calls that would need to be delivered to” the SBC tandem in

FCC Rcd 6800 (Apr. 8, 2004); *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (Jan. 23, 2002); *Long-Term Number Portability Tariff Filings; U S WEST Communications, Inc.*, CC Docket No. 99-35; Transmittal Nos 965, 975, 1002, Memorandum Opinion and Order, 14 FCC Rcd 11983 (July 9, 1999); *Long-Term Number Portability Tariff Filings; Ameritech Operating Companies, et al.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11883 (July 1, 1999); *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116; RM 8535, Memorandum Opinion and Order, 13 FCC Rcd 24495 (December 14, 1998); *Telephone Number Portability*, CC Docket No. 95-116; RM 8535, Third Report and Order, 13 FCC Rcd 11701 (May 5, 1998).

⁶² Odin Motion to Strike, ¶ 13.

⁶³ Odin Exhibit 1, Attachment 1, p. 2.

Centralia,⁶⁴ it is appropriate to confirm those rates against the publicly available tariffs on file with this Commission.

Because transport and transit cost constitutes 41.9% of Odin's total LNP cost projections,⁶⁵ any publicly available data that impugns Odin's basis for its alleged costs becomes important factual information that must be considered by this Commission.⁶⁶ Due to the importance of this information in enabling the Administrative Law Judge at the Commission to make a fair and reasoned decision that is consistent with public interest, if deemed necessary by the Administrative Law Judge or the Commission, Verizon Wireless hereby requests that the record be re-opened and that administrative notice be taken of the information provided by Verizon Wireless, which Odin seeks to strike. Administrative notice is appropriate under Section 200.640(a)(3) of the Commission's Rules, as "[a]nnual reports, tariffs, classifications and schedules regularly established by or filed with the Commission as required or authorized by law or by an order or rule of the Commission."⁶⁷ Section 200.640(c) of the Commission's Rules provide:

"Parties and Staff shall be notified either before or during the hearing **or otherwise** of the materials noticed and shall be provided a reasonable opportunity to contest the materials so noticed."⁶⁸

Verizon Wireless' Brief provides sufficient notice to all parties of such materials. Clearly, as evidenced by the instant Motion to Strike, Odin has had an opportunity to contest

⁶⁴ Odin Exhibit 1, p. 17, 18.

⁶⁵ Odin Exhibit 1, Attachment 1, p. 1. Transport and transit is \$104,809.00 of a total LNP cost projection of \$249,760.00.

⁶⁶ *Illinois Bell Telephone Company Tariff*, Ill. C.C. No. 21, orig. pgs 207.1.1.1 and 212.2, effective MAR. 17, 2001.

⁶⁷ 83 Ill. Admin. Code, §200.640(a)(3).

⁶⁸ 83 Ill. Admin. Code, §200.640(c)(emphasis added).

such materials. It has chosen not to do so. Because of the importance and relevance of these tariffed rates, which directly impeach the rates cited by Odin's witness, such materials should be allowed to remain in the record and should be considered by this Commission.

X. GENERIC PROPOSED ORDER

In Paragraph 20, of its Motion to Strike, Odin attempts to strike Verizon Wireless' Proposed Order on the grounds that it allegedly "reflects no facts specific to Odin."⁶⁹ Verizon Wireless modeled its proposed order on those used in the first five LNP waiver cases to be considered by this Commission.⁷⁰

Odin's witness provided virtually identical pre-filed testimony to all of the other 32 dockets. A side-by-side examination of Mr. Hoagg's 20 page pre-filed testimony in the 33 dockets easily demonstrates that they are virtually identical and even Staff's cost witnesses, presented virtually identical pre-filed testimony in all 33 dockets. The only substantive differences between each of the 33 Petitioners was the cost information. Verizon Wireless provided this Commission with a "fill-in-the-blank" draft order that addresses all of the points raised in this docket and into which Odin's specific cost information could be inserted.

However, to obviate Odin's concern that the ALJ might inappropriately apply the wrong figures to such a form proposed order,⁷¹ Verizon Wireless has attached as Attachment A to its Response to Odin's Motion to Strike a completed Proposed Order for Odin. This completed

⁶⁹ Odin Motion to Strike, ¶ 20.

⁷⁰ Madison Telephone Company, Docket No. 03-0730; Egyptian Telephone Cooperative Association, Docket No. 03-0726; Harrisonville Telephone Company, Docket No. 03-0731, Alhambra-Grantfork Telephone Company, Docket No. 03-0732; and Home Telephone Company, Docket No. 03-0733.

⁷¹ Odin Motion to Strike, ¶ 20.

proposed order differs from the one previously submitted only in that it has been completed for Odin, for purposes of comparison, those “fields” that have been completed remain underlined.

XI. VERIZON WIRELESS VOLUNTARILY WITHDRAWS CERTAIN SPECIFIC REFERENCES IN ITS BRIEF

While Verizon Wireless believes that the following portions of its brief are entirely proper and should not be stricken, given the short time period allowed for this response, and the fact that Petitioners bear the burden to prove all of which Verizon Wireless sought to disprove in its brief, Verizon Wireless, is voluntarily withdrawing the following portions of its generic brief:

- References to certain other carriers that are required to be LNP capable in Illinois⁷² and,
- Verizon Wireless’ assertion that the Appeals pending before the United States Circuit Court for the District of Columbia are expected to be decided by the first quarter of 2005.⁷³

If required by the Commission, Verizon Wireless will re-file its Brief conforming the Brief with the above listed voluntary withdrawals.

⁷² Verizon Wireless withdraws the following text and associated footnote, appearing on page 23 of its Brief, “Bergen Telephone Company, Chandlerville Telephone Company, Citizens Telephone Company, Clarksville Mutual Telephone Company, Frontier Communications, Inc., Gallatin River Telephone Company, Geneseo Telephone Company . . . , Randview Mutual Telephone Company, and Sharon Telephone Company.” This is in response to Paragraph 7 of Odin’s Motion to Strike. Verizon Wireless adamantly objects to Odin’s request to strike *all* of Section II.D of Verizon Wireless’ Brief. Verizon Wireless’ witness, Michael A. McDermott testified to numerous areas of the State of Illinois in which LNP is available. Verizon Wireless Exhibit 1, p. 8. In addition there was substantial discussion, on the record regarding Illinois Consolidated Telephone Company’s offering of LNP. TR 217-218.

⁷³ Verizon Wireless withdraws the following text appearing on page 47 of its Brief, “Given the November 2004 oral argument date, a decision in the case is expected in the first calendar quarter of 2005”; *See*, Odin Motion to Strike, ¶18.

XII. CONCLUSION

Odin asks this Commission to impose the most draconian penalty upon Verizon Wireless, to strike the Brief of Verizon Wireless in its entirety. To do so would force this Commission to consider Odin Petition without the benefit of any view from companies or their consumers who stand to lose if an additional suspension of Odin's intermodal LNP requirement is granted, and obviously deny Verizon Wireless due process. Even if this Commission agrees with any of the arguments made by Odin in its Motion, in order to protect each Party's due process rights and allow the Commission to consider all viewpoints in making its determination, the Commission must deny Odin' motion while noting for the record that Odin's concerns will be taken into account in giving proper weight to Verizon Wireless' arguments.

WHEREFORE, Verizon Wireless respectfully requests that the Illinois Commerce Commission (1) deny Odin's Motion to Strike, (2) deny Odin's request for a two-and-one-half-year suspension of its LNP obligation for the reasons set forth in Verizon Wireless' brief, and, (3) require Odin to provide LNP no later than November 24, 2004.

Respectfully submitted,

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* * * * *

Docket No. 04-0239

COMPLETED PROPOSED ORDER OF VERIZON WIRELESS

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

Odin Telephone Exchange, Inc.)
)
Petition for Suspension or Modification of)
Section 251(b)(2) requirements of the Federal)
Telecommunications Act pursuant to Section)
251(f)(2) of said Act; for entry of Interim Order;))
and for other necessary relief.)

Docket No. 04-0239

PROPOSED ORDER OF THE COMMISSION

SUBMITTED BY VERIZON WIRELESS

By the Commission:

I. INTRODUCTION

On March 11, 2004, Odin Telephone Exchange, Inc. ("Petitioner") filed with the Illinois Commerce Commission ("Commission") a Verified Petition pursuant to §251(f)(2) of the Federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq. Petitioner seeks an Order suspending or modifying the Local Number Portability requirement imposed by Section 251(b)(2) of the TA 96. On May 11, 2004, the Commission entered, as requested by Petitioner, an Interim Order suspending any obligation of the Petitioner to provide intermodal LNP until a final order is entered in this proceeding.

On April 20, 2004, Verizon Wireless filed a Petition for Leave to Intervene in this proceeding, noting its objection to the Petitioner's request for an Interim Order suspending the requirement that the Petitioner provide intermodal LNP.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on April 1, 2004, April 5, 2004, April 27, 2004, at which the intervention of Verizon Wireless was granted, June 8, 2004. Appearances were entered by counsel on behalf of Petitioner, Commission Staff ("Staff"), and Verizon Wireless. No other appearances were entered. Petitioner, Staff, and Verizon Wireless each presented testimony and other evidence in support of their positions. At the end of the June 8, 2004 hearing, the record was marked "Heard and Taken." On June 30, 2004, the parties submitted briefs and proposed orders. On July __, 2004, the Administrative Law Judge served a proposed order on the Petitioner, Staff, and Verizon Wireless.

II. BACKGROUND.

Petitioner is a telephone Company and a facilities based incumbent local exchange carrier (“ILEC”) providing local exchange telecommunication services as defined in §13-204 of the Public Utilities Act (“ACT”), 220 ILCs 5/1-101 et seq., and is subject to the jurisdiction of the Commission except as limited by §13-701 of the Act. Petitioner provides service in the Odin, Shobonie, Oblong, and Martinsville exchanges. Petitioner’s service area consists of approximately ____ square miles in which it provides service to approximately 3,791 access lines. Petitioner claims that its service territory is sparsely populated with Petitioner having approximately ____ customers per square mile. Petitioner is a “rural telephone company” within the meaning of Section 153(37) of the TA 96 and Section 51.5 of the Rules of the Federal Communications Commission (“FCC”). As a rural telephone company, Petitioner possesses a rural exemption under Section 251(f)(1)(A) of the TA 96 from the requirements of Section 251(c) of the TA 96. Petitioner is also “a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide” within the meaning of Section 251(f)(2) of the Act.

III. GOVERNING LAW.

Section 251(b)(2) of the TA 96 provides in part:

(B) obligations of all local exchange carriers. —Local Exchange Carrier has the following duties:

* * *

(2) Number Portability.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC].

In implementing its authority, the FCC, on November 10, 2003, released a *Memorandum Opinion and Order and Further Notice of Proposed Rule-Making* in CC Docket No. 95-1160 (“FCC Order”). As it pertains to the Top 100 MSAs, the FCC Order concludes, in part, at paragraph 22 as follows:

We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's “coverage area” overlaps the geographic location of the rate center in which the customer’s wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

The FCC continued, at paragraph 29, to extend the date for implementation of intermodal LNP for carriers outside the Top 100 MSA, such as the Petition to May 24, 2004:

Therefore for wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the

requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

Previously, however, the FCC adopted 47 C.F.R. 52.23(c), which also concerns LNP and provides that:

(c) Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.”

Despite the FCC’s rules, though, 2% carriers may seek additional suspension of LNP requirements pursuant to Section 251(f)(2) of the TA 96. This section states:

(2) Suspensions and modifications for rural carriers.—A Local Exchange Carriers with fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a state commission for a suspension or modification of the Application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The state commission shall grant such petition to the extent that, and for such duration as, the state commission determines that such suspension or modification—

(A) is necessary—

“(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

“(ii) to avoid imposing a requirement that is unduly economically burdensome; or

“(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenient, and necessity.

The state commission shall upon any petition, filed under this paragraph within 180 days after receiving such petition. Pending such action, the state commission may suspend enforcement of the requirements or requirements to which the petition applies with respect to the petitioning carrier or carriers.

IV. PARTIES' POSITION.

A. Petitioner's position.

As a general matter, Petitioner states that it provides to its customers the services they want when a sufficient number of customers desire the service and all of its customers are willing to pay the associated costs. Petitioner does not believe that it should be required to provide what it characterizes as a discretionary service such as intermodal LNP and to incur the associated costs until its customers want it to do so. The Petitioner contends that demand for intermodal LNP does not exist, and basis this contention on the Petitioner's knowledge of its customer base. Absent this Commission's Interim Order suspending the FCC's requirements that the Petitioner provide intermodal LNP, the Petitioner would be required to do so because the Petitioner received requests for LNP from Verizon Wireless and other wireless carriers. Copies of these requests have been entered into the record.

Petitioner's position is that it should not be required to provide intermodal LNP within its serving area until such time as any operational, and administrative, and technical problems associated with its provision have been resolved on a more global basis by the large ILECs, such as SBC and the wireless carriers requesting number portability. Petitioner believes that it is significant that no telecommunications carrier has asked the Commission to terminate Petitioner's rural exemption pursuant to the provisions of Section 251(f)(1)(B) of the TA 96, and that a staff inquiry to unnamed sources at two LECs indicated a low take rate for intermodal local number portability for the first month in which it was available in those carriers' service areas. These facts, Petitioner argues, evidence the lack sufficient demand for LNP service from competitive providers. The Petitioner also indicates that it lacks experience in providing LNP and would have to incur new costs to provide LNP now.

Companies such as SBC, on the other hand, have been providing some type of LNP for a number of years, according to the Petitioner. Those companies, Petitioner observes, have already made the incremental investment to provide LNP and have trained employees and have had ongoing business experience as a provision of at least some type of LNP. Petitioner asserts that statements from the FCC, news stories, and the trade press have made it clear that there are indeed operational, administrative, and technical problems that need to be worked through on an industry basis.

In Petitioner's view, from a policy and industry perspective, this would appear to be similar to the situation when customers were initially allow to presubscribed to interexchange carriers. Petitioner states that presubscription was initially implemented by the large carriers, such as the Regional Bell Operating Companies; and the operational, and administrative, and technical difficulties associated with presubscriptions were worked out over a period of time between those large ILECs and the large interexchange carriers, such as AT&T, MCI, and Sprint. In connection with determinations Primary Toll Carrier Plan in Illinois, Petitioner relates that the Commission provided a different and subsequent time table of presubscription for small companies, such as the Petitioner, after experience had been gained from the larger companies.

From a technical perspective, Petitioner indicates that the current generic software contained in its host switch will accommodate number portability, but that the feature has not been “loaded” or “activated.” Personnel from the switch manufacturer would, according to Petitioner, have to load and activate the capability, as well as make translations in switches and perform testing and verification. An agreement with a vendor to provide LNP service or administration services would also be necessary, Petitioner contends. Since at least calls to ported numbers and long distance calls would need to have a database dip in connection with the provision of number portability, Petitioner further asserts that an application will have to be filed with NPAC, the national provider of that service, to obtain NPAC management system services. Petitioner believes that operational support systems would need to be reviewed and modified as well. Technical training for its employees, Petitioner continues, would also be necessary.

With regard to implementing intermodal LNP, Petitioner reports that the FCC’s orders and rules do not require a wireless carrier to have a point of presence within Petitioner’s serving area, nor do they require the wireless carrier to establish direct trunks to Petitioner for the purpose of delivering calls. Since no wireless carrier has a point of interconnection or numbering resources in any exchange or rate center within its serving area, Petitioner believes, based upon the FCC’s current requirements, that all calls from one of its wireline customers to customers that choose to port their numbers to a wireless carrier would have to be transported to the tandem provider for delivery to the wireless carrier. Petitioner states that the routing of a call to a location outside of its local calling area would normally lead to such a call being rated as an interexchange call or toll call. However, Petitioner concedes that FCC rules require a ported call to be rated as a local call if it was previously rated as a local call since the customer’s rate center designation will not change.

Additionally, Petitioner argues that it should in no event be required to provide wireline - to-wireless LNP until such time as regulatory decisions have been made and mechanisms put in place that will allow it to recover all of its costs associated with the provision of intermodal LNP. Petitioner complains that the FCC’s orders to date, including the November 10, 2003 FCC Order, fail to address how numerous significant costs, such as the cost of transporting calls to wireless points of interconnection outside of the ILEC’s serving area and associated transiting or tandem switching costs, will be recovered. While it is Petitioner’s belief that those costs should not be borne by it or its customers, Petitioner states that no regulatory decision by the FCC or this Commission has been made as to how those costs will be recovered and mechanisms put in place to allow for such recovery. However, the Petitioner acknowledges that the FCC did not stay the implementation of its LNP order pending such a determination.

While it does not believe that it or its customers should be responsible for the transport and transiting costs associated with delivering calls to wireless carriers, for purposes of evaluating the economic burden in this proceeding, Petitioner has assumed it, and ultimately its customers, will be responsible for such costs. Though the Petitioner does not seek Commission approval of any type of end user surcharge or to otherwise increase rates associated with the provision of intermodal LNP, the Petitioner has estimated a per-customer monthly charge using a model based on cost support filed and approved by the National Exchange Carrier Association (“NECA”) in an LNP filing it made with the FCC in NECA’s Transmittal No. 956.

Petitioner calculates that initial LNP startup costs and certain ongoing expenses over a five year period amount to \$249,760.00 before applying present value factors. After applying present value factors, the cost is \$202,584.00. To recover its costs, Petitioner states that it would have to recover \$1.31 per month from each access line over a five year period. Attachment 1 to Petitioner's Direct Testimony shows how Petitioner arrived at these cost estimates. In light of these costs, Petitioner argues that a suspension or modification of any obligation it may have to provide intermodal LNP necessary to avoid a significant adverse economic impact on its customers and that the granting of such further suspension is consistent with the public interest, convenience, and necessity. The Petitioner disagrees with certain adjustments made to its costs by Staff.

Once any cost and technical matters are resolved, Petitioner states further that it should not have to provide intermodal LNP until between six and ten percent of its customers indicate desire for intermodal LNP.

B. Staff's Position.

In making its recommendation, Staff focuses on Section 251(f)(2)(A)(i) of the TA 96 as the most directly applicable of the three standards that appear in Section 251(f)(2)(A). The Staff explains that FCC rules, specifically 47 CFR §§52.21-52.33, provide that the Petitioner may recover LNP related costs from any users (on a per access line basis as prescribed in the rules) over a period of five years. Staff understands that Petitioner will recover its costs if and when it is required to implement intermodal LNP. Since costs associated with intermodal LNP will be borne by Petitioner's customers generally, Staff asserts that a central question for the Commission is whether such costs would cause "significant adverse economic impact on users of telecommunications services generally." In this specific application of Section 251(f)(2)(A)(i), Staff states that the phrase "users of telecommunications services generally" is best understood to refer to the general body of Petitioner's subscribers thus, while Section 251(f)(2)(A)(ii) also may apply, Staff believes that the fact that intermodal LNP costs be borne largely by end users warrants that Commission focus on Section 251(f)(2)(A)(i). Staff also asserts that Section 251(f)(2)(A)(iii) is not at issue in this proceeding since deployment of intermodal LNP by Petitioner is technically feasible.

With regard to the cost burden on end user customers and Petitioner, Staff states that there are two cost-related circumstances that are of concern. First, Staff notes that the Petitioner does not currently provide wireline to wireline LNP. Because of those facts Staff relates that the Petitioner would need to recover all LNP related costs for the sole purpose of providing intermodal LNP. This is in contrast, Staff observes to carriers that already have deployed LNP capabilities pursuant to a request by another wireline carrier and whose incremental cost of extending the capabilities to wireless carriers is minimal at best. Second, Staff agrees with Petitioner that the issue of cost recovery for transit and transport has not yet been resolved. Because of its current routing arrangements, all calls from Petitioner's local exchange customers to numbers that have been ported (from Petitioner to wireless carriers) would incur routing and transport costs. Without a recovery mechanism in place, Staff indicates that it cannot be determined how these costs will impact the Petitioner or its end users. Staff agrees with Petitioner that these costs may not be trivial.

In an attempt to determine whether Petitioner's customers would experience a significant adverse economic impact, Staff reviewed Petitioner's costs estimates associated with providing intermodal LNP. Staff questioned Petitioner's characterization of some costs and Petitioner's estimates of other costs. As a result of its analysis Staff initially reduced the Petitioner's cost analysis from \$1.31 to \$0.98 per subscriber line per month. Staff emphasizes this figure is not a recommended rate for an LNP surcharge, and that Staff does not have any authority to approve such a surcharge, but rather is a means to gauge the impact of intermodal LNP on end users.

Staff also questioned Petitioner's inclusion of transiting and transport charges in its estimated LNP surcharge cost analysis. Staff also expressed concern whether or not it was even appropriate to include transiting and transport costs in the LNP surcharge in light of: 1) the "uncertainty with respect to who is ultimately responsible for transport and transiting costs associated with porting numbers from the LECs to wireless carriers"; 2) the fact that the "the FCC's order mandating LNP to wireless carriers determined that issue was outside the scope of that proceeding; and, 3) the fact that "the levels of transport and transit costs are very sensitive to the assumptions about the number of customers who elect to port their number to a wireless carrier and the amount of usage of those customers." Staff also found inconsistencies and uncertainties in the Petitioner's estimate of transiting and transport charges, including misstatements of the SBC tariff rates for such services. Staff provided a second scenario in which transiting and transport charges were removed. This scenario further reduced the Petitioner's estimated LNP surcharge to \$0.50 per subscriber line per month.

Because Staff is not aware of any quantitative or precise measures (or any generally accepted methodology) to determine whether a given level of costs or charges would cause "significant adverse economic impact on users of telecommunications services generally," Staff recommends that careful application of judgment on a case specific basis. Staff compares the Petitioner's estimated LNP surcharge, of \$1.31 per access line per month, and the Staff Scenario including transiting and transport, of \$0.98 per access line per month to SBC's charge of \$0.28 for access line per month. Staff did not compare the scenario that removes the estimated transiting and transport charges. Staff points out that the estimated per line surcharge for Petitioner is higher than the comparable figure for SBC. In this instance, Staff therefore concludes that the application of judgment warrants a temporary suspension of intermodal LNP requirements.

C. Verizon Wireless' Position.

Verizon Wireless notes that this Petition is essentially identical in both content and in its position and testimony to thirty-nine (39) other petitions for suspension of intermodal LNP that have been filed with this Commission. Verizon points out several ways that this petition, and the others, failed to meet the applicable legal standards set forth in Section 251(f)(2) of the TA 96. Verizon Wireless also points out numerous flaws and inflations contained in the Petitioner's costs analysis.

The FCC assigned the burden of proof in a suspension request, under Section 251(f)(2) of the TA 96, to the Petitioner in 47 C.F.R. §251.405(b). The Petitioner has failed to demonstrate how a suspension is necessary to avoid adverse impacts on the Petitioner, the Petitioner's

customers, wireless carriers, and customers of wireless carriers. Verizon Wireless disagrees with the Petitioner and Staff's application of the term "users of telecommunications services generally" from Section 251(f)(2)(a)(i) of the TA 96. Based on rules of grammatical construction, legislative intent, and statutory construction the word "generally" cannot mean that the Commission should look only at users of Petitioner's service. Rather the word "generally" means that the Commission must examine the impact of a suspension on users of telecommunications services who would be affected by an additional suspension. The Petitioner failed to raise or prove that a suspension would have an adverse impact on anyone but the Petitioner and the Petitioner's users. Verizon Wireless also noted that the Petitioner failed to raise or prove any grounds for suspension under Sections 251(f)(2)(A)(ii) and 251(f)(2)(A)(iii).

Verizon Wireless also raised concerns that the Petitioner and Staff failed to examine various public interest standards which this Commission must consider. This Commission must consider the fact that LNP has already been determined by the FCC and this Commission to be in the public interest. This Commission must consider the fact that LNP optimizes number resources, which is in the public interest. This is especially important as the Petitioner operates in an NPA which has been declared to be in jeopardy by the North American Numbering Plan Administrator. The Commission must consider the public interest the advancement of competition that will be fostered by LNP—a long stated goal of, and a statutory requirement imposed on, this Commission. Additionally, Verizon Wireless contends that the Commission must consider the adverse impact an additional suspension would have on the public interest because of consumer confusion caused the fact that some residents of the state will be able to port their telephone numbers and other residents will not, creating a patchwork approach to a Federal mandate designed to benefit all consumers.

Verizon Wireless points out that several Illinois ILECs are currently offering, or required to offer, intermodal LNP in their service territories. These carriers include SBC Illinois, Verizon North, Inc., Verizon South, Inc., Bergen Telephone Company, Chandlerville Telephone Company, Citizens Telephone Company, Clarksville Mutual Telephone Company, Frontier Communications, Inc., Gallatin River Telephone Company, Geneseo Telephone Company, Illinois Consolidated Telephone Company, Randview Mutual Telephone Company, and Sharon Telephone Company. These carriers, some of which are similarly situated to the Petitioner, are able to offer intermodal LNP without incurring significant adverse economic impacts claimed by the Petitioner.

Verizon Wireless notes that the Petitioner included with its testimony, copies of correspondence from Verizon Wireless and other wireless carriers that demonstrate that Verizon Wireless sought to have LNP made available in the Petitioner's service territory. The Petitioner ignored these communications. The Petitioner specifically requested that the Commission not decide whether or not these communications constitute bona fide requests ("BFRs"). The Petitioner failed to take any steps to fulfill its LNP obligations, required by these BFRs, in a timely manner.

Verizon Wireless points out that the Petitioner contends that it should not be required to provide intermodal LNP until there is a demonstrated demand. However, demand for the service is not determinative of the public interest and is not the legal standard to be met in order to

qualify for a suspension from LNP. Moreover, Petitioner's claim that there is no demand for LNP is not based on substantial or credible evidence. Petitioner has not taken any formal steps to quantify or measure if there is any demand in its service territory. Intermodal LNP is a new, forward-looking requirement that seeks to spur competition among carriers and in the local exchange market. The availability and marketing of LNP will create its own demand once consumers begin to realize the benefits of competition.

Verizon Wireless questions the cost analysis provided by the Petitioner. Verizon Wireless cited to several FCC standards for determining the appropriate amount of any LNP surcharge on customers. As noted by Verizon Wireless the FCC requires that only carrier specific costs directly related providing number portability can be recovered through an LNP surcharge. Verizon Wireless recommends that the reductions applied by Staff be applied to the Petitioner's cost analysis before the Commission considers the amount of any LNP surcharge in this proceeding. Verizon Wireless also notes that the FCC separated considerations regarding routing calls from the obligation to provide LNP. Therefore, this Commission should not consider transiting and transport costs in any analysis of the impact of an LNP surcharge upon the Petitioner's customers. Furthermore, Verizon Wireless points out the gross overstatement of SBC rates for tandem transiting contained in the Petitioner's cost analysis for transiting and transport and supports Staff's skepticism regarding these numbers in general.

When transiting and transport is removed from the equation, the Petitioner's estimated LNP surcharge is reduced to \$0.50, per subscriber per month. Verizon Wireless concludes that this amount is not significantly more than those LECs who already have LNP surcharges, and would not be a significant adverse impact on the Petitioner's customers and certainly not on "users of telecommunications services generally."

Further, the Petitioner has taken no steps to minimize the impact of its direct costs of providing LNP by petitioning the FCC for additional time over which to amortize these costs. The FCC has recently been receptive to such requests.

Verizon Wireless points out that Staff's policy witness failed to analyze the LNP surcharge with transiting and transport costs removed. Staff's policy witness also relied on the Petitioner's position without independently verifying or examining assumptions made by the Petitioner. Staff's policy witness provided the exact same testimony in each suspension proceeding for this Commission, despite a statutory obligation for this Commission to examine such petitions on a case-by-case basis.

Verizon Wireless raises numerous procedural arguments regarding this and other petitions for further suspension from LNP obligations. Among these arguments is that the petitions rely almost exclusively on five initial cases which were settled by the Petitioners and Staff without input from any wireless carriers, and are currently the subject of rehearings before this Commission. Verizon Wireless also argues that the grant of the petition along with the other pending petitions would constitute a blanket waiver, not permitted by statute, and would constitute an improper collateral attack on the FCC's Number Portability Orders.

Verizon Wireless recommends that the Commission deny Petitioner's request for an additional suspension, and require the Petitioner to provide local number portability as soon as practicable, but no later than November 24, 2004. In addition, Verizon Wireless requests that the Commission order the Petitioner to provide periodic updates on the progress it is making toward such provision.

V. COMMISSION CONCLUSION

For reasons cited by Verizon Wireless, the Commission finds that further suspension of the requirement to provide intermodal LNP pursuant to Section 251(b)(2) of the TA 96 is not warranted. Specifically the Commission concludes that the Petitioner failed to meet its burden of proof that the requirement to provide LNP would impose a significant adverse economic impact on users of telecommunications services generally and has failed to prove that a further suspension would be in the public interest. In addition, because the FCC has not authorized the inclusion of transiting and transport costs in an LNP surcharge, and limits the composition of an LNP surcharge to those costs directly incurred by the carrier in providing LNP, the Commission has examined the various costs analysis provided to it and finds that the Staff scenario presented without transiting and transport is more reasonable and does not demonstrate an adverse economic impact. The Commission hereby extends its previously entered Interim Order until November 24, 2004 for Petitioner to conclude any implementation tasks. To ensure that the Petitioner is making progress towards completing its implementation of LNP by that date, the Commission hereby requires the Petitioner to file progress reports with the Commission, in this Docket, on October 1, 2004 and on November 1, 2004.

VI. FINDINGS AND ORDERING PARAGRAPHS.

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Petitioner is a telecommunications carrier as defined in §13-202 of the Act providing telecommunications services to customers in Illinois;
- (2) The Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) The facts were cited and conclusions reached in the prefatory portion of this Order or supported by the record and are hereby adopted as findings of fact and law;
- (4) Petitioner's request, pursuant to §251(f)(2) of the TA 96, a further suspension of any intermodal LNP obligations applicable to Petitioner under §251(b)(2) of the TA 96 is hereby denied;
- (5) The temporary suspension previously entered in this proceeding shall expire on November 24, 2004;

- (6) As of November 24, 2004, the Petitioner must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port;
- (7) The Petitioner shall file, in this docket, status reports indicating its progress towards providing LNP on October 1, 2004 and on November 1, 2004; and
- (8) All motions, petitions, objections, and other matters in this proceedings which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Odin Telephone Exchange, Inc. shall make intermodal local number portability under §251(b)(2) of the Federal Telecommunications Act of 1996 and under the Federal Communications Commission's Orders available on November 24, 2004.

IT IS FURTHER ORDERED that the Temporary Suspension granted to Odin Telephone Exchange, Inc. shall expire on November 24, 2004.

IT IS FURTHER ORDERED that Odin Telephone Exchange, Inc. shall file with the Illinois Commerce Commission, in this docket, status reports indicating its progress in implementing local number portability on October 1, 2004 and on November 1, 2004.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____, 2004.

Chairman

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

Odin Telephone Exchange, Inc.)	
)	
Petition for Suspension or Modification of)	
Section 251(b)(2) requirements of the Federal)	Docket No. 04-0239
Telecommunications Act pursuant to Section)	
251(f)(2) of said Act; for entry of Interim Order;)	
and for other necessary relief.)	

NOTICE OF FILING

To: Parties of Record

You are hereby notified that I have, this 16th day of July, 2004, filed with the Chief Clerk of the Illinois Commerce Commission the Response in Opposition to Motion to Strike All or Part of Verizon Wireless' Brief on behalf of Verizon Wireless, in the above-captioned proceeding, via the electronic e-docket system.

Haran C. Rashes
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(517) 381-9193

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response in Opposition to Motion to Strike All or Part of Verizon Wireless' Brief on behalf of Verizon Wireless, in the above-captioned proceeding, were served upon the parties on the attached service list via electronic mail on July 16, 2004.

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